

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

74-2063

To Be Argued By:

LEROY B. KELLAM, Esquire

In The
UNITED STATES COURT OF APPEALS
for the SECOND CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

Docket No.

74-2663

2063

-against-

RICHARD PATTERSON,
Defendant-Appellant

DEFENDANT-APPELLANT'S APPENDIX
ON APPEAL

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USA 52-119

UNITED STATES DEPARTMENT OF JUSTICE

UNITED STATES ATTORNEY
FOR THE
EASTERN DISTRICT OF NEW YORK
FEDERAL BUILDING
BROOKLYN, NEW YORK 11201

UNITED STATES OF AMERICA :

.vs. :

RICHARD PATTERSON, :

Defendant. :

INDICTMENT

CRIMINAL NO. 74 CR 240

FOLDER NO. 741479

MAILED April 4, 1974

PLEASE TAKE NOTICE that the above case will be called in the
United States District Court for the Eastern District of New York,
225 Cadman Plaza East, in the Borough of Brooklyn on the 11th
day of April, 1974, at 9:30 A.M.,
6th Floor, Courtroom # 10, at which time the defendant
herein will be required to plead to an indictment heretofore filed,
for an alleged violation of the United States Criminal Code.

If defendant fail to attend, a warrant will be issued for
his arrest.

EDWARD JOHN BOYD V
UNITED STATES ATTORNEY

TO: Above Defendant

TO: Leroy B. Kellam, Esq. Attorney

TO: _____ Bondsman

By Myles C. Cunningham
Assistant U. S. Attorney

To Bondsman: You are notified to produce the above-named defendant,
on the above date, otherwise the bond will be forfeited,
not defaulted, on the above date.

cc: Assigned Judge Weinstein
U. S. Marshall, Calendar Commissioner
Clerk, U.S. District Court E.D.N.Y.

TPP:MCC:po
F.#741,479

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA

-against-

RICHARD PATTERSON,

Defendant.

----- X

THE GRAND JURY CHARGES:

On or about the 30th day of January 1973,
within the Eastern District of New York, the defendant
RICHARD PATTERSON, did knowingly and intentionally attempt
to distribute approximately one-eighth (1/8) kilogram of
heroin hydrochloride, a Schedule II, narcotic drug, con-
trolled substance. (Title 21, United States Code, §841
(a)(1).)

A TRUE BILL

FOREMAN.

EDWARD JOHN BOYD V
United States Attorney
Eastern District of New York

74CR240

INDICTMENT

T. 21, U.S.C. §841(a)(1)

WEINSTEIN,

4-2-74

SIR:

PLEASE TAKE NOTICE that the within will be presented for settlement and signature to the Clerk of the United States District Court in his office at the U. S. Courthouse, 225 Cadman Plaza East, Brooklyn, New York, on the ____ day of _____, 19____, at 10:30 o'clock in the forenoon.

Dated: Brooklyn, New York,

_____, 19____

United States Attorney,
Attorney for _____

To: _____

Attorney for _____

SIR:

PLEASE TAKE NOTICE that the within is a true copy of _____ duly entered herin on the ____ day of _____, in the office of the Clerk of the U. S. District Court for the Eastern District of New York,
Dated: Brooklyn, New York,

_____, 19____

United States Attorney,
Attorney for _____

To: _____

Attorney for _____

CRIMINAL _____ Action No. _____

UNITED STATES DISTRICT COURT
Eastern District of New York

UNITED STATES OF AMERICA

—Against—

RICHARD PATTERSON,

Defendant.

I N D I C T M E N T

~~EDWARD JOHN BOYD, V~~
United States Attorney,
Attorney for U. S. A. _____
Office and P. O. Address,
U. S. Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

Due service of a copy of the within _____
is hereby admitted.

Dated: _____, 19____

Attorney for _____
Myles C. Cunningham
Assistant U.S. Attorney
596-5312

A-1

1
2 hypothetical case here of four-year-old children
3 or heroin that was analyzed and found not to be
4 heroin, found to be sugar or anything like that.
5 That is not the case before you.

6 I want you to decide this particular case
7 on the evidence you have heard and the charge
8 that I am now giving you and which I have given
9 you in part. Is that clear?

10 Now retire and consider your verdict,
11 unless there is something else you want.

12 MR. KELLAM: No, your Honor.

13 THE COURT: Anything else you want?

14 MR. KELLAM: No, your Honor.

15 (The jury withdrew at 2:40 p.m.)

16 ---

16 (At 3:40 p.m. the following occurred,
17 out of the hearing of the jury.)

18 THE COURT: Mark this note.

19 THE CLERK: Court Exhibit 11.

20 (So marked)

21 (The jury entered the courtroom at
22 3:41 p.m.)

23 THE COURT: Madam, I understand that the
24 jury has reached a verdict.

25 THE FOREMAN: Yes, it has.

1
2 THE COURT: Mr. Clerk, take the verdict.

3 THE CLERK: How do you find the defendant,
4 guilty or not guilty?

5 THE FOREMAN: Guilty as charged.

6 THE CLERK: As the Court has received
7 your verdict, you say you find the defendant
8 guilty as charged?

9 So say you all?

10 (The jury nodded in the affirmative.)

11 THE COURT: Poll the jury.

12 THE CLERK: You have heard the verdict
13 as the Court has received it. Now, yes or no,
14 is that your verdict?

15 THE FOREMAN: Yes.

16 THE CLERK: No. 2?

17 JUROR NO. 2: Yes.

18 THE CLERK: No. 3?

19 JUROR NO. 3: Yes.

20 THE CLERK: Juror No. 4?

21 JUROR NO. 4: Yes.

22 THE CLERK: No. 5?

23 JUROR NO. 5: Yes.

24 THE CLERK: No. 6?

25 JUROR NO. 6: Yes.

1
2 THE CLERK: No. 7?

3 JUROR NO. 7: Yes.

4 THE CLERK: No. 8?

5 JUROR NO. 8: Yes.

6 THE CLERK: No. 9?

7 JUROR NO. 9: Yes.

8 THE CLERK: No. 10?

9 JUROR NO. 10: Yes.

10 THE CLERK: No. 11?

11 JUROR NO. 11: Yes.

12 THE CLERK: No. 12?

13 JUROR NO. 12: Yes.

14 THE CLERK: So say you all.

15 THE COURT: Is there any reason why this
16 jury should not now be discharged?

17 MR. CUNNINGHAM: No.

18 MR. KELLAM: No.

19 THE COURT: Do not go home. I want you
20 to go downstairs and wait. I may need you.

21 (The jury withdrew at 3:42 p.m.)

22 THE COURT: Any motions?

23 MR. KELLAM: At this time I move to set
24 aside the verdict based on insufficiency of the
25 evidence.

1 THE COURT: Denied.

2 Anything further?

3 What is the bail status of the defendant?

4 MR. KELLAM: I believe he is on his own
5 recognizance.

6 THE COURT: Are you on your own recogni-
7 zance?

8 THE DEFENDANT: Yes.

9 THE COURT: Any objection to continuing it?

10 MR. CUNNINGHAM: Yes. I move at this time
11 for bail to be increased insofar as the defendant
12 is charged with a serious crime where a penalty
13 possibly of fifteen years may be imposed. He has
14 been known to be associated with violence. This
15 trial was delayed for six months while the man
16 was in the hospital recovering from five bullet
17 wounds, and I think there is danger of flight.

18 MR. KELLAM: I think this is certainly
19 altogether untested testimony that has been given
20 by the District Attorney and I cannot see by any
21 stretch of the imagination coming up with that
22 answer because a man was in the hospital for
23 having been hurt or shot that now there is danger
24 of his flight. He has been here each and every
25 time.

1 THE COURT: What is he doing? Is he
2 working?

3 MR. KELLAM: At the present time he is on
4 workmen's compensation as a result of his being
5 off after this injury.

6 THE COURT: Who does he live with?

7 MR. KELLAM: With his wife and family.

8 THE WITNESS: I live at 277 Rockaway
9 Parkway.

10 THE COURT: Do you go home every night?

11 THE DEFENDANT: Yes.

12 THE COURT: Are you on your own recog-
13 nizance?

14 THE DEFENDANT: Yes.

15 THE COURT: All right, that will be con-
16 tinued.

17 Do not do anything stupid like trying to
18 run away, because if you are not available when
19 I need you, you will get the book thrown at you
20 for this crime, which is fifteen years, and you
21 can get something else, and I won't have any
22 mercy on you on the sentence.

23 THE DEFENDANT: Yes, I understand.

24 THE COURT: Keep in touch with your
25 attorney at all times and let him know where you

1 are living and where you are working, and if
2 he wants you he can get you in a few hours;
3 do you understand?
4

5 THE DEFENDANT: Yes.

6 THE COURT: Take him down and get Proba-
7 tion started.

8 MR. KELLAM: Thank you, your Honor.
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2 this is the critical question in the case, as
3 I suppose it is.

4 All right, we'll just take a moment, and
5 I'll see you.

6 (Recess)

7 (Jury enters the jury box.)

8 THE COURT: Call your next witness, please.

9 MR. CUNNINGHAM: The Government calls
10 as its next witness William Simpson.

11
12 W I L L I A M S I M P S O N, called as a witness,
13 having been duly sworn by the Clerk of the Court,
14 testified as follows:

15 THE CLERK: Full name for the record,
16 please.

17 THE WITNESS: William Simpson.

18 DIRECT EXAMINATION

19 BY MR. CUNNINGHAM:

20 Q Mr. Simpson, what is your occupation,
21 please?

22 A Special Agent, Drug Enforcement Administration.

23 Q How long have you been so employed?

24 A Since September 17, 1972.

25 Q Prior to your employment with the drug

1
2 Enforcement Administration, how were you employed?

3 A I was a director of the drug program for
4 the Board of Education.

5 Q Prior to that?

6 A I was a New York State narcotics rehabili-
7 tation officer.

8 Q Were you so employed with the Drug Enforce-
9 ment Agency on January 30, 1973?

10 A Yes, sir.

11 Q In what capacity were you so employed?

12 A Undercover agent.

13 Q What did this generally entail?

14 A The purchase of heroin and/or cocaine.

15 Q Would you assume an identity different
16 than your own?

17 A Yes, sir.

18 Q Now, I refer you specifically to January
19 30, 1973. What were your specific duties on that date?

20 A I was to make a telephone call to Alle-
21 gheny Airlines at LaGuardia Airport.

22 Q To whom were you to make the telephone call?

23 A To a Richard Patterson.

24 Q Did you in fact make this telephone call?

25 A Yes, sir.

1
2 Q What was the purpose of the telephone call?

3 A I was to tell him that my name was Mike,
4 and I was Dee's friend from Pittsburgh, and I just ar-
5 rived in town to purchase the one-eighth kilogram of
6 heroin for \$5,000.

7 Q Did you make arrangements to meet this
8 person on that telephone call?

9 A Yes, sir.

10 Q Where did you make arrangements to meet
11 him?

12 A At the Allegheny Airlines bar.

13 Q I show you Government's Exhibit 1 for
14 identification and ask you if you can identify it
15 (handing to witness).

16 A Yes, sir.

17 Q Please tell the Court what it is.

18 A That's the tape of the conversation.

19 Q I show you this document consisting of
20 three pages and ask you if you can identify it.
21 (Handing to the witness).

22 A Yes, that is the transcript of the tape.

23 MR. CUNNINGHAM: I ask that that be marked
24 as Government's Exhibit 4 for identification.

25 THE CLERK: Government's Exhibit 4 for

1
2 identification.

3 (So marked)

4 (Said document handed to Mr. Kellam.)

5 MR. KELLAM: I object to this being offered
6 at this time without the proper foundation being
7 laid for it, your Honor.

8 THE COURT: What foundation would you like
9 to have laid?

10 MR. KELLAM: Your Honor, I would object--
11 He said that he called to a Richard Patterson,
12 I believe, but there's been no showing that the
13 Richard Patterson was the defendant.

14 THE COURT: All right, establish that
15 fact.

16 MR. CUNNINGHAM: All right, your Honor.

17 Q Agent Simpson, you talked to a gentleman
18 on the telephone; is that correct, on January 30, 1973?

19 A Yes, sir.

20 Q Had you ever heard that voice before?

21 A Yes, sir.

22 Q When had you heard that voice before?

23 A No --

24 O In other words -- I'll withdraw the
25 question.

Excuse me.

Prior to speaking to this gentleman on January 30, 1973, had you ever spoken to him before?

A No, sir.

Q When you later met the gentleman at the airport, did you recognize the voice of the man you met at the airport?

A Yes, sir.

Q What was the recognition?

A From the conversation on the telephone.

Q Therefore, is it your testimony that the person you spoke to on the telephone was the same person you subsequently met at LaGuardia Airport?

A Yes, sir.

MR. KELLAM: Objection, your Honor, leading, your Honor.

THE COURT: It has been answered, proceed.

MR. CUNNINGHAM: I now move to mark this tape as well as the taped transcript as Government's Exhibit 4 and 4-A in evidence.

THE COURT: Any objection now?

MR. KELLAM: Same objection, Judge.

THE COURT: Yes. You recognize the man that you met at the airport?

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THE WITNESS: Yes, sir.

THE COURT: Who is he?

THE WITNESS: The fellow sitting right next to (indicating) --

THE COURT: Indicating the defendant. Is that the man whose voice you recognized over the phone?

THE WITNESS: Yes.

THE COURT: Objection overruled. Mark them in evidence.

THE CLERK: The tape was previously marked as Government's Exhibit 1 for identification. It will be Government's Exhibit 1 in evidence, and Government's Exhibit 4 for identification marked in evidence. Exhibit 4 is the transcript of the tape.

(So marked)

THE COURT: Any objection to playing the cassette?

MR. KELLAM: No, your Honor.

MR. CUNNINGHAM: With the Court's permission, I'll pass out copies of the tape.

THE COURT: No objection having been indicated, you may do so.

1
2 R Uh huh
3 R So where you at now?
4 SA OK, I'm right, I'm at the airport, right
5 now.
6 R Uh huh
7 SA Hum, I'm on the second level
8 R Uh huh
9 SA Hum, just come to Allegheny Airlines and
10 come up to the second level, right, and
11 as you come in, you make a left turn and
12 there's a bar. I got a black leather
13 jacket, a leather coat on, and red
14 pants, you can't miss me.
15 R You at the Allegheny
16 SA Yea, right
17 R I never hear that airlines
18 SA At LaGuardia Airport
19 R Yea yea, now I know what you are talking
20 about, OK, then, so look
21 SA Now dig it Richard man like I want to
22 be on the 10:40 flight and I don't like,
23 you know, laying around here waiting
24 R Uh hum
25 SA Can you dig that, you know what's
happening

1
2 R Yea yea
3 SA You know
4 R Alright, I'll tell you what, I'll be over
5 R I'm be over there, it now quarter to
6 seven, I'll be over there, about five
7 after seven
8 SA You be over by five after seven
9 R Yea
10 SA Beautiful, beautiful yea, please make
11 it here fast as possible, man, so you
12 know, if I can catch an earlier flight
13 out, I even try to do that, I just want
14 to cop and tip, you know
15 R I'll be there
16 SA OK beautiful, so ah, what you be wearing
17 so ah, I'll know you now
18 R I'' be wearing a black cap and a red
19 leather coat, burgundy leather coat
20 SA Uh black cap and uh
21 R Burgandy yea, long leather coat
22 SA Solid brother
23 R OK then
24 SA Uh right, take care then
25 R Alright

1
2 S later

3 R Bye"

4 Q Agent Simpson, where did you make this
5 telephone call from?

6 A At the Allegheny Airlines.

7 Q You were at the Allegheny Airlines?

8 A Yes, sir.

9 Q Who was present while you made this con-
10 versation?

11 A Special Agent Slattery and Special Agent
12 Phil Bellini.

13 Q Do you recall the time?

14 A Approximately 6:50.

15 Q Did there come a time you met someone at
16 the airport?

17 A Yes, sir.

18 Q Let me go back for one second. Prior to --
19 Let's go back. After making this telephone call to the
20 defendant, Mr. Patterson, what did the other agents over
21 there at the airport do?

22 A Well, they gathered around the airport.
23 They went to various surveillance positions.

24 Q What was their function at the airport?

25 A To watch me and see the defendant coming in

there was a recording made of this conversation and this was it.

THE WITNESS: Yes, it was.

THE COURT: Overruled.

MR. CUNNINGHAM: I will offer it in evidence as Government Exhibit 1.

MR. KELLAM: Objection.

THE COURT: Sustained at this time.

Q Now, at this telephone conversation between Agent Simpson and Defendant Patterson, what did you direct the men in your group to do, if anything?

MR. KELLAM: I object to the leading nature of the question.

THE COURT: Overruled on that ground.

A Following the telephone call I directed the agents who were present to set up for a foot surveillance in the Allegheny Terminal, because Agent Simpson had arranged with the party --

MR. KELLAM: I object to the arrangements he had made.

THE COURT: Sustained.

Q Tell the Court and ladies and gentlemen of the jury what you yourself did and saw, rather than what was told to you by other people.

MR. KELLAM: Your Honor, may we have an answer to the question.

THE COURT: Tell us where you sent your men.

THE WITNESS: At various locations in the terminal area to await the arrival of -- the expected arrival of Mr. Patterson.

Q Did, in fact, Mr. Patterson arrive at the air terminal?

A Yes, he did.

Q Did he arrive in a car?

A Yes, he was --

MR. KELLAM: I object to the leading, your Honor.

THE COURT: Try not to lead the witness.

Q Did the defendant come on foot or driving a car?

A He was driving a vehicle, a 1965 blue Buick convertible.

Q Was anyone else in the car with him?

A There was a female companion. She was identified later as Juanita Brian.

MR. KELLAM: I object.

THE COURT: I cannot hear you.

and the deal taking place.

Q Who did you subsequently meet at the airport?

A Mr. Patterson.

Q Is he in the courtroom today?

A Yes, sir.

Q Please point him out to the Court.

A (Indicating)

MR. CUNNINGHAM: Let the record indicate the witness Agent Simpson, is pointing out the defendant, Richard Patterson.

Q How did you recognize Mr. Patterson at the airport?

A He had a burgundy leather jacket on, dark blue dungaree pants, dark blue hat.

Q Did you have any conversation with Mr. Patterson at the time you met him?

A Yes, sir.

Q Whereabouts did you meet Mr. Patterson?

A At the Allegheny Airlines bar.

Q In the bar?

A Yes, sir.

Q You have a drink together?

A No, sir.

1
2 Q Were you drinking at the time in the bar?

3 A Yes.

4 Q What did you have to drink?

5 A Ginger ale.

6 Q You said you had a conversation with him
7 there at the bar?

8 A Yes, sir.

9 Q What did he say and what did you say?

10 A I asked him if he had the package. He
11 says it would only take fifteen or twenty minutes to get
12 it. He says, "Let's go outside to the men's room to
13 further talk about it."

14 Q Did you actually leave the bar?

15 A Yes, sir.

16 Q Where did you go then?

17 A Into the men's room.

18 Q What happened in the men's room?

19 A Well, he told me that some of his friends
20 had been arrested by undercover police officers, and
21 et cetera, and they were wearing KEL units on their
22 bodies.

23 Q Can you explain to the ladies and gentle-
24 men of the jury and the Court what a Kel unit is?

25 A A Kel unit is a device used when a police

1
2 officer or undercover agent is making a deal. Let's say
3 like in an apartment or something. He may have a belt
4 around his waist, a belt, whereas other agents outside on
5 the street can be able to hear the conversation, know
6 exactly what's going on, but it depends upon the agent
7 or the police officer, if he feels that he has to wear
8 this.

9 Q Would it be right -- What they call the
10 Kel unit, like a transmitter?

11 A Yes, sir.

12 Q What happened after he asked you about
13 this Kel unit?

14 A He unbuttoned his leather coat and opened
15 up his shirt and said, "Look, I'm no police officer.
16 Can you do the same?"

17 Q What did you do?

18 A I said, "I can do the same," unbuttoned
19 my coat, unbuttoned my shirt. As I was doing this
20 another agent walked in, Agent Patrick Shea, which he
21 observed the whole thing, and then Patterson says,
22 "O.K., let's go out to the bar" I mean "out of the
23 men's room."

24 Q At this point were you wearing a Kel unit?

25 A No, sir.

1
2 Q After you left the bar, where did you go
3 then?

4 A We proceeded -- excuse me, men's room.
5 We proceeded right outside the men's room and then Patter-
6 son says, "Well, it would take me twenty minutes to get
7 the one-eighth kilogram of heroin, but I would have to
8 give him half of the money, which would be \$2500."

9 Q Did you have any money with you at the
10 time?

11 A Yes, sir, I had \$5,000 with me.

12 Q Was this an exact amount that had been
13 given to you, \$5,000?

14 A Yes, sir.

15 Q How much money did Mr. Patterson say would
16 have to be put up front?

17 A Half of that, \$2500.

18 Q What did you say to Mr. Patterson?

19 A I told him I wasn't giving him no money
20 unless I received the package first.

21 Q What did he say?

22 A Mr. Patterson says, "Well, I have a girl-
23 friend." He says, "This is the only way I can do the
24 deal. I have to have half the money up front," and he
25 says, "Well, I have a girlfriend that is right outside.

1
2 You can give her the \$2500 and let her go pick up the
3 package, and I'll stay here at the airport with you
4 for security. This way you wouldn't have to worry about
5 your money."

6 I thought about it for a second, and
7 then I says, "O.K., that sounds good."

8 Then he asked to see the money. So I took
9 the envelope out, opened it up, and showed it to him.

10 Q What denominations of currency was this
11 money?

12 A \$100 bills.

13 Q What did you do then?

14 A Then we proceeded outside of the terminal
15 and he waved to his girlfriend.

16 Q Where was his girlfriend?

17 A She was parked -- as we walked outside the
18 terminal, she was on the left. I would say about maybe
19 30 feet away, and in the car. He waved to her and she
20 drove up and when she drove up I asked him to go back
21 inside of the terminal while I'll get in the car and give
22 her the \$2500.

23 Q Why did you ask him to go back inside the
24 terminal?

25 A Because I figured if I got in the car with

1
2 Mr. Patterson and the girl together, that was like two
3 to one, and I'm in the car and anything could have
4 happened, so I figured if he got inside the terminal,
5 I could be able to talk to her, and be able to give her
6 the \$2500 and then get out.

7 Q Did you in fact get into the automobile?

8 A Yes, sir, I did.

9 Q What took place inside the automobile?

10 A Once I got inside the automobile I counted
11 out \$2500 to her.

12 Q Did you give the money to --

13 A Yes, I did. Then she asked me, she says,
14 "Can I speak to Richard?"

15 I said, "Yes, you can speak to Richard.
16 Give me back the \$2500."

17 She gave me back the \$2500. I exited the
18 vehicle and called Richard over.

19 Richard walked over, and I was standing
20 by the terminal inside the terminal. She spoke to
21 Richard for not even a half of a minute. Then Richard
22 came back inside and he says, "O.K, everything is good.
23 Give her the \$2500."

24 Then both of us walked over, was walking
25 over towards the car. Then Richard stated -- he said,

1
2 "Wait a minute. Let me go back inside and copy down a
3 telephone number, just in case anything happens while
4 she's getting the heroin."

5 So I agreed. He walked back inside,
6 copied down a telephone number. Then both of us walked
7 to the car. I handed the girl \$2500, and Richard handed
8 her a telephone number. Then she exited the area.

9 Q Do you recall which telephone booth this
10 number was taken from at the airport?

11 A Yes, sir, I recall.

12 Q From where you were standing outside the
13 terminal, were you able to observe the defendant, Patter-
14 son, walking inside the terminal going up to the tele-
15 phone booth?

16 A Yes, sir, yes.

17 Q Did the girl then -- what did the girl
18 then do after you had given her the money?

19 A She departed the area.

20 Q Where did you and Mr. Patterson go?

21 A We walked right back inside of the terminal
22 and we sat -- I was sitting down and I think Mr. Patter-
23 son was either standing up. We were right next to the
24 telephone booth.

25 Q You still had the \$2500 in your pocket?

1
2 A No, sir. I gave her \$2500 and I had the
3 remaining, other \$2500.

4 Q When you say you walked back inside the
5 terminal to the telephone booths, was this the same
6 telephone booth that Mr. Patterson had previously walked
7 up to?

8 A Yes, sir.

9 Q And copied the telephone number down?

10 A Yes, sir.

11 Q Can you tell us what happened after that?

12 A (No response.)

13 Q What you did, what Mr. Patterson did.

14 A We were just sitting around, standing
15 around, waiting. I think I was reading a newspaper or
16 something, and it must have been about three minutes or
17 four minutes after she had left, two police officers
18 came up to us and asked us for identification and told
19 us to get against the wall, and there was a frisk.

20 By that time it must have been about
21 nine or ten police officers.

22 Q Did you have any conversation -- were you
23 able to identify yourself to the police officers?

24 MR. KELLAM: Judge, I must object to so
25 much leading.

MR. CUNNINGHAM: Excuse me, your Honor.

The witness said immediately before he was asked for identification.

THE COURT: Just ask the witness to describe what happened.

Q Please describe what happened between you and the police officers.

A Yes. We were placed against the wall. I was situated -- they separated us almost like this corner here (indicating). I was over here being frisked. (indicating). They took Mr. Patterson over here (indicating). He was frisked, whereas Mr. Patterson couldn't see me being frisked, and I was able to tell the police officer that I was a narcotics agent and I was working on a deal, and he's going to blow a \$5,000 deal, and by this time he was -- the sergeant -- or somebody -- he was able, he said, "O.K., just" --

MR. KELLAM: I object to a statement made by some other officer, Judge.

THE COURT: Sustained.

A (Continuing) The police officer -- After I showed the police officer my identification, he just said, "O.K."

Then he let myself go and he let --

MR. KELLAM: Judge, I must repeat my objection and ask that this conversation, what he said, be stricken.

THE COURT: Strike it.

Q After you had shown the identification to the police officer, were you released from custody of the Police Department?

A Yes, sir, but it wasn't --

MR. KELLAM: Objection. Couldn't we just ask him what happened, rather than ask him -- rather than telling him what to say and asking him what happened?

THE COURT: Proceed.

THE WITNESS: Shall I proceed?

THE COURT: Yes, tell us what happened, please.

A (Continuing) While I was being frisked and being asked for my identification, I was able to show the police officer my badge and I told him I'm a federal narcotics agent and I was working on a deal.

While this was going on, the police in the area -- the telephone rang. I wasn't able to answer it.

MR. KELLAM: I object to the fact there

1
2 was a telephone ringing as being not connected
3 with this. There's no foundation showing the
4 telephone ringing has anything to do with this
5 particular incident.

6 THE COURT: Well, the jury will have to
7 draw its inferences. Proceed.

8 A (Continuing) After the telephone had rang, I was
9 unable to answer the telephone or Mr. Patterson was
10 unable to answer the telephone.

11 After I had shown him my identification,
12 tried to explain to the police officers who I was, it
13 must have been about a half minutes or a little after
14 that. Then they let us both go and the police exited
15 the area.

16 Q Excuse me, Agent Simpson. Is this the same
17 telephone that was ringing that you had previously seen
18 the defendant Patterson walk into?

19 A Yes, sir.

20 Q This was the telephone that he had copied
21 the number out of --

22 MR. KELLAM: I would object to that.

23 THE COURT: On what grounds?

24 MR. KELLAM: On the grounds that the
25 District Attorney is, in effect, testifying.

The record speaks for itself, and if he wants him to do that, then let him tell is rather than ask him the question, to put the words in his mouth.

THE COURT: Overruled.

MR. KELLAM: Respectfully except.

Q Was this the same telephone that the defendant had previously written down the telephone number of?

A Yes, sir.

Q Approximately how many policemen arrived on the scene when they frisked you?

A It must have been about eight or nine.

Q This was out in full view of everyone in the terminal?

A Yes, sir.

Q Was there any attempt made by the Police Department to conceal their actions, or was it a blatant frisk?

A Blatant frisk.

MR. KELLAM: I object, judge.

Q What took place after the police officers departed from the scene?

A After the police officers left the area, Mr. Patterson walked over to me and he says, "This looks like a setup to me. You could be a police officer."

1
2 I says, "If I was" -- there was no way
3 that I'm a police officer.

4 He says, "Well, I seen a narcotics agent
5 around here named Dick, and I just don't like this."

6 Then Mr. Patterson made a telephone call.
7 He said he was leaving the area, and I says, "Well,
8 you're not leaving unless I get my \$2500 back or the
9 package."

10 He made a telephone call. I don't know who
11 he spoke to, but what he said, the conversation was,
12 "I don't like there going on at the airport. Get the
13 money back and give the heroin back and I'm leaving the
14 airport now."

15 Q Do you know who he called on the tele-
16 phone?

17 A No, sir, I have no idea.

18 Q Do you have any idea what number he called?

19 A No, sir.

20 Q You mentioned previously that he said
21 there was a narcotics policeman by the name of Dick?

22 A Yes, sir.

23 Q What is the name of your group leader that
24 was there at that airport that day?

25 A Dick Slattery.

1

2

Q What happened after Agent -- after the
defendant Patterson said that he wouldn't do the deal?

3

4

A Well, we got into a heated argument, because I was interested now in the money. I wanted that money back. Mr. Patterson says, "If you want the money, you're going to have to come with me. I'm leaving this area now."

5

6

7

8

9

Q Did you go with him?

10

A Yes, I did.

11

Q Tell us where you went.

12

A We went out to Queens, at a place called

13

the Showplace bar on Farmers Boulevard.

14

Q How did you get out to the Showplace bar?

15

A By taxi.

16

Q You and Mr. Patterson go together?

17

A Yes, sir.

18

Q Tell us what happened at the Showplace

19

bar in Queens.

20

A Mr. Patterson stated that his girlfriend

21

would be in the bar and he would check. The bar was

22

very crowded. I seen people going back and forth inside

23

the bar. So I told Mr. Patterson that I would stay in

24

the taxi while he would go in the bar looking for her.

25

Mr. Patterson exited the taxi, went into

1
2 the bar, stayed in there for about -- maybe ten minutes,
3 five minutes. He came back outside and he says, "She's
4 not in there, but why don't you come inside and have a
5 drink with me, and we'll wait?"

6 I said, "No, I'll wait out here."

7 Then he went back in the bar and he
8 stayed in the bar for maybe another fifteen or twenty
9 minutes.

10 Then I exited the taxi, walked into the
11 bar, and asked him, "Has she arrived?"

12 He said, "No, I haven't heard from her yet.
13 Have a drink."

14 I said, "No, I'll wait outside."

15 I exited the bar, went back inside of the
16 cab, stayed in the cab for another ten or fifteen minutes.

17 Then I asked the cab driver to go back in--
18 I mean I asked the cab driver to go into the bar.

19 Q Did he go into the bar?

20 A Yes, he did. He exited the cab, went in-
21 side the bar. Then he came back outside. He says, --

22 MR. KELLAM: I'll object, your Honor.

23 THE COURT: Sustained.

24 Q After the cab driver came back out, what
25 did you do then?

1

2

A Then we left and --

3

Q Where did you go to?

4

A We drove to the nearest phone booth and

5

I made a telephone call.

6

Q Where was the nearest phone booth?

7

A Well, I made a call on 188th Street,

8

Jamaica Avenue.

9

Q After you made the phone call where did

10

you go?

11

A I stayed right there at the diner. I in-

12

formed the agents, the surveillance agents, of what was

13

transpiring and they told me to wait there.

14

Q Did you subsequently meet the other agents

15

there at the diner?

16

A Yes, sir.

17

MR. CUNNINGHAM: I have no further questions

18

of this witness.

19

CROSS EXAMINATION

20

BY MR. KELLAM:

21

Q Agent Simpson, how long do you say you have

22

been in your present position?

23

A Since September 17, 1972, sir.

24

Q And what time did this happen?

25

A This happened September --

1

2

Q You met Agent Simpson there at the diner?

3

A That's correct.

4

Q What did you personally do at that point?

5

A I debriefed Agent Simpson as to what had

6

transpired.

7

Q O.K.

8

A He told me that --

9

MR. KELLAM: I object.

10

Q Just tell us, please, what you did after

11

you had this conversation with Agent Simpson. What did

12

you then do personally?

13

A I then directed the other agents that were

14

there to proceed to the vicinity of Mr. Patterson's

15

residence and to the general Hollis area, Farmers Boule-

16

vard and Francis Lewis Boulevard areas, to look for Mr.

17

Patterson.

18

I also directed Agent Simpson to proceed

19

to call periodically Mr. Patterson's residence and the

20

Showplace bar. He was to remain at that diner and call.

21

Q There came a time when you observed Mr.

22

Patterson in the red and white Cadillac. What actions

23

did you take at that time when you observed him in the

24

Cadillac?

25

A Well, the Cadillac had just pulled to the

1
2 airport. When was the next time you saw the defendant,
3 Mr. Patterson?

4 A I saw him -- it was approximately 1:45 in
5 the morning of the 31st of January.

6 Q What time did they leave the airport?

7 A They left the airport at approximately
8 7:45, 8:00 o'clock.

9 Q What were the circumstances of your seeing
10 Mr. Patterson at 1:30 or 1:45 in the morning of January
11 31st?

12 A He was riding in a Cadillac, white-over-
13 red Cadillac, in the vicinity of Farmers Boulevard, and
14 the other agents and myself were in the process of look-
15 ing for Mr. Patterson because we found out from Agent
16 Simpson that he had left him earlier, and we spotted him
17 just exiting this vehicle that I just mentioned.

18 Q What had you done, then, from the time from
19 8:30 when the defendant and Agent Simpson left the airport
20 to approximately 1:45 the next morning?

21 MR. KELLAM: I believe the testimony was

22 7:45.

23 MR. CUNNINGHAM: Excuse me.

24 Q From the time you saw the defendant and
25 Mr. Simpson, Agent Simpson, leave the airport, until the

1
2 side of the road and there were two occupants. Mr. Pat-
3 terson was a passenger. The two occupants were just in
4 the process of exiting the car.

5 Q You did not pull the car over?

6 A No, they were in the process of exiting
7 the car, and myself and Agent Barrett were in one car
8 and the other agents were in that immediate area, and
9 we stopped. I think, as I recall, stopped adjacent to
10 the Cadillac, and I got out of the vehicle and approached
11 Mr. Patterson. I told him he was under arrest.

12 Q What did you do then, after you placed
13 him under arrest?

14 A He was put in a "frisk" position, which is
15 hands over the car. I frisked him for a weapon and found
16 none. Then I put handcuffs on him and escorted him to
17 the -- my vehicle.

18 Q Whereabouts in your vehicle did you put
19 him?

20 A He was put in the rear seat.

21 Q What did you do then?

22 A I walked around to the front of my car.
23 I got in the driver's side and Agent Barrett got in the
24 front passenger side.

25 Q What was the next conversation you had with

1
2 the defendant?

3 A I took out my wallet and read from a BND
4 Form 13, which is a statement of rights. I read these
5 rights.

6 Q I show you this card and ask you if you
7 can identify this (handing to witness).

8 A Yes, this is the form 13-A, Oral Warnings
9 to be Given to a Subject to Prior to Oral Interrogation.

10 (Said document shown to Mr. Kellam.)

11 Q Agent Slattery, are these the rights you
12 read to the defendant?

13 A That's correct.

14 MR. CUNNINGHAM: I would like to have
15 this marked as Government's Exhibit 1 in evi-
16 dence.

17 THE CLERK: Two.

18 MR. CUNNINGHAM: Two, excuse me.

19 THE CLERK: So marked, Exhibit 2 in
20 evidence.

21 (So marked)

22 Q (Handing to witness) Agent Slattery, I ask
23 you to read from that card, please.

24 A Yes, as I stated, it's a BND Form 13-A.
25 It's oral warnings to be given to a subject prior to

oral interrogation.

"Before we ask you any questions, it is my duty to advise you of your rights.

"1. Do you understand that you have a right to remain silent?

"2. Do you understand that anything you say can and will be used against you in court or other proceedings?

"3. Do you understand that you have the right to talk to your lawyer before we ask you any questions, and to have him with you during the questioning?

"4. If you cannot afford or otherwise obtain a lawyer, and you want one, a lawyer will be appointed for you by the U.S. Commissioner or the court, and we will not ask you any questions until he has been appointed.

"5. If you decide to answer now, with or without a lawyer, you still have the right to stop the questioning at any time or to stop the questioning for the purpose of consulting a lawyer. However...

"You may waive the right to advice of counsel and your right to remain silent, and

1
2 you may answer questions or make a statement with-
3 out consulting a lawyer if you so desire."

4 Q Was that the advice of rights card you read
5 to the defendant, Mr. Patterson?

6 A That's correct.

7 Q In your opinion, did he understand what
8 was said?

9 A Yes, he answered each question individually
10 in an affirmative manner.

11 Q Is that your common practice to ask, when
12 you read a right to him, to wait for an answer before
13 you go on to the next right?

14 A That's correct.

15 Q Is that your policy?

16 A That's Bureau policy; it's my policy.

17 Q After you gave Mr. Patterson his rights,
18 you entered into any conversation with him?

x 19 A Yes, I did.

20 Q Please tell us the substance of the conver-
21 sation.

22 A I questioned him as to where Pookie, which
23 was the nickname of Juanita Bryant, the woman companion
24 he had arrived with at the terminal earlier.

25 Q Excuse me. Let me interrupt you for one

1
2 moment. Who was present while this conversation was
3 going on?

4 A Agent Barrett; I asked him where she was,
5 and he replied that he didn't know, but that she was
6 driving his car and that she had promised him \$500 after
7 the deal had gone down, and he was looking for her to
8 get his car back and to possibly collect some money.

9 Q How long did this conversation take, would
10 you say?

11 A Right at that location, approximately five
12 minutes or so.

13 Q What did you do then?

14 A I asked Mr. Patterson if it would be --
15 if he would be agreeable to us going to his residence to
16 look for Juanita Bryant and/or the money, and he was very
17 emphatic. He said, "Yeah, go ahead. No problem. Come
18 on over."

19 Q Did you then go back to the apartment?

20 A At that time I briefly -- I exited my car
21 and told the other agents what we were going to do and
22 then I got back in the car and Agent Barrett and myself
23 and Mr. Patterson followed by the other agents proceeded
24 to his residence, and we entered the residence and con-
25 fronted Nancy Brown, who is Mr. Patterson's girlfriend.

MR. KELLAM: I object. It calls for a conclusion, Judge.

Q Did Mr. --

MR. KELLAM: I move to strike the portion of the statement that says, characterizes the person he talked to.

THE COURT: Strike it.

Q When you got to Mr. Patterson's apartment, was there anyone present in the apartment?

A A woman, Nancy Brown.

Q What time was this, approximately?

A This was approximately 2:15, 2:00 o'clock, somewheres in there.

Q That's in the morning?

A Yes.

Q What took place at the apartment?

A We looked in the apartment for Juanita Bryant and also the money and we didn't find neither, and then I asked Miss Brown and Mr. Patterson if it would be all right if we stationed two agents there at the apartment to await for a possible arrival of Miss Bryant or a possible phone call from her, and this they agreed to do.

Q This was perfectly voluntarily?

1

2

A Yes.

3

MR. KELLAM: I object to the leading, Judge.

4

THE COURT: Sustained.

5

6

Q Was this a voluntary agreement by Mr. Patterson to allow you two agents at this apartment?

7

A Yes, it was.

8

Q What did you do then?

9

10

A I stationed Agent Mangino and Agent Crawford at the apartment, and the other agents and myself and Mr. Patterson proceeded to search the Farmers Boulevard area out there under the direction of Mr. Patterson.

11

12

13

14

15

Q You say "under the direction of Mr. Patterson." What do you mean, "under the direction of Mr. Patterson"?

16

17

A Well, Mr. Patterson had agreed to take us to various after-hour places in hopes of finding --

18

19

Q Excuse me. What do you mean by an "after-hours" place?

20

21

22

A These are bars that are open after the legal time that they should be closed. There's a lot of bars like that in that area.

23

Q Is that private clubs?

24

A Private clubs, yes.

25

Q Did there come a time that you found Miss

1
2 Bryant?

3 A No, we never got out of the vehicle because,
4 in effect, we were looking for Mr. Patterson's vehicle,
5 which might be parked around the area.

6 So, when we didn't see it, this was about
7 5:15, I guess, in the morning when I decided to terminate
8 this activity. I notified the agents in Mr. Patterson's
9 apartment to discontinue their activity out there and
10 everyone was then to proceed to Region 2 Headquarters
11 at 90 Church Street.

12 Q Mr. Patterson and all the other agents
13 came back to 90 Church Street?

14 A That's correct.

15 Q What took place at 90 Church Street?

16 A At 90 Church Street Mr. Patterson was
17 photographed, fingerprinted, and otherwise processed,
18 and following that he was taken to --

19 Q Excuse me for one moment, if I may.

20 At what time did you get back to 90 Church
21 Street?

22 A We got back there at about 5:45 in the
23 morning.

24 After the processing, Mr. Patterson was
25 taken to our group area, my office area. Agent Mangino

1
2 and Agent Barrett proceeded to question Mr. Patterson.
3 They read him a Form BND 13, which is a waiver of rights.

4 Q Excuse me. Were you present when Agent
5 Barrett and Agent Mangino presented the defendant Patter-
6 son with this BND Form 13?

7 A Yes, I was.

8 Q I show you this document (handing to
9 witness) and ask you if you can identify it.

10 A Yes, this is a statement of rights and
11 waiver.

12 MR. CUNNINGHAM: I would like to have this
13 BND Form 13 marked as Government's Exhibit 3 in
14 evidence.

15 MR. KELLAM: No objection, your Honor.

16 THE COURT: Mark it.

17 THE CLERK: Government's Exhibit 3 in
18 evidence.

19 (So marked)

20 Q Can you identify that and tell the ladies
21 and gentlemen of the jury what that is?

22 A Yes, this is a form which is used to sup-
23 plement the Form 13-A which I read earlier.

24 The Form 13-A is really a field form.
25 This is more of a form that's used in the office while

questioning or just prior to questioning a defendant.

Q But basically, it's the same type of form giving the person his rights under the Constitution before arrest?

A That's correct.

Q You were present when this form was read to the defendant?

A That's correct.

Q After this rights form was read to the defendant, what took place then to your knowledge?

A Well, I began to write my report about the activities that occurred earlier, because Agent Simpson had -- we say "fronted" \$250[^], and there was a little problem then.

Q You were writing the report? You were in the same room, though --

A I was in the same area.

Q Who else was in this room?

A The other agents that were with me earlier that evening.

Q Agent Mangino in that room?

A Agent Mangino was questioning Mr. Patterson with Agent Barrett.

Q And was Agent Barrett making -- let's see,

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Q Now, you were in charge of the agents who participated in this particular under cover alleged sale, attempted sale; is that correct?

A That's correct.

Q You had conferences with them wherein you had made whatever plans were to be made with reference to this place; is that true?

A That's correct.

Q And was there any other supervisor over you, or were you in sole charge?

A No, I have a supervisor.

Q Well, was that supervisor called at any time during that night to ask him what should you do or what kind of information you should give to the agents that were directly under you?

A No.

Q What is the name of that supervisor?

A Well, the supervisor that was before me at the time was Assistant Regional Director James P. Hunt.

Q Did you at any time go over the plan with Assistant Director Agent Hunt?

A Yes, I did.

Q When did you go over the plan with Agent

1
2 that"; is that correct?

3 A That's right.

4 MR. KELLAM: I object to the testimony.

5 THE COURT: Yes, I don't see that all this
6 is relevant. Move to new ground, please.

7 Q Agent Slattery, you did not need, or did
8 you need the permission of Mr. Patterson to search his
9 house?

10 A In effect, no.

11 Q Thank you. I believe you testified earlier
12 that you specifically instructed Agent Simpson not to
13 front up any money. In other words, don't give any
14 money like a down payment until you get the package
15 back?

16 A That's correct.

17 Q That's correct. What do you mean by a
18 package?

19 A A package of heroin or cocaine or whatever
20 he might be negotiating for.

21 Q But usually considered a drug of some sort
22 when you refer to the word "package": is that correct?

23 A Pardon me?

24 Q The word "package" usually refers to a
25 narcotic substance?

Agent Mangino and --

Q I ask you if you can identify Government's Exhibit 3 in evidence (handing to witness).

A Yes.

Q Would you tell us what that is?

A It's a BND form 13. It's a statement of rights.

MR. KELLAM: Your Honor, I will have to object again. I don't think the proper foundation has been laid yet for leading him into that sort of written statement.

THE COURT: Overruled.

Q Can you tell us what this is, please.

A Yes, sir, a BND Form 13, a statement of rights and waivers.

Q This is the statement that was read to the defendant?

A Yes.

Q In your presence?

A Yes, sir.

Q Is this your signature on the bottom of that form?

A Yes, it is.

Q Anyone else's signature on the bottom of

1
2 that form?

3 A F.A. Mangino's.

4 Q What does that represent?

5 A Witnessing officials.

6 Q That says you witnessed the reading of
7 those rights to the defendant?

8 A Yes.

9 Q What took place after these rights were
10 read to the defendant?

11 A Then I sat down and Agent Mangino proceeded
12 to ask Mr. Patterson questions and I wrote them down in a
13 statement form.

14 Q Agent Barrett, I show you two sheets,
15 yellow foolscap and ask you if you can identify these
16 documents.

17 A Yes, sir, I can.

18 MR. CUNNINGHAM: I would ask these state-
19 ments be marked as Government's Exhibit 6 for
20 identification.

21 THE CLERK: Government's Exhibit 5 for
22 identification.

23 (So marked)

24 (Continued on the next page.)

1
2 Q Tell us what that statement is.

3 A It is handwritten, it is my handwriting.
4 It is a statement given to me by Richard Patterson on
5 the morning of January 31st.

6 MR. CUNNINGHAM: I offer the statement
7 in evidence as Government's Exhibit 5.

8 MR. KELLAM: Objection, your Honor.

9 THE COURT: Signed by the defendant?

10 MR. CUNNINGHAM: No, it is not.

11 THE COURT: The witness can testify
12 orally to what he heard and he may use the
13 statement if he exhausts his recollection, for
14 refreshment purposes.

15 MR. KELLAM: May I have a voir dire before
16 he testifies orally?

17 THE COURT: Remove the statement from the
18 witness. I do not understand the nature of the
19 voir dire. He is testifying to what he remembered.

20 MR. KELLAM: He is going to refresh his
21 recollection with the statement.

22 THE COURT: Not until he has exhausted it
23 first. You want a voir dire on what basis?

24 MR. KELLAM: I am sorry, Judge.

25 THE COURT: All right, go ahead.

1
2 Go ahead.

3 BY MR. CUNNINGHAM:

4 Q Agent Barrett, when you sat down at --
5 When you sat down at the table your function was to take
6 down more, or less act as a recorder, would that be a
7 proper --

8 A Yes, sir.

9 Q Who asked the questions that were going on?

10 A Agent Mangino.

11 Q Agent Mangino would ask a question and
12 you would try and write down exactly what was being
13 answered by the defendant?

14 A I believe that is what I tried to do.
15 There may have been a statement or two in there that
16 was where I will say, "Do you mean this?" it was written
17 down, that was --

18 Q To the best of your knowledge the state-
19 ment that was written down was written in the words of
20 the defendant himself?

21 A Yes, sir.

22 Q It was brought out that this statement
23 was not signed by the defendant. Were you aware of that?

24 A Yes, sir.

25 Q Can you tell us basically what the --

1
2 excuse me -- the advice of rights form was not signed
3 by the defendant either, was it?

4 A I do not believe so, sir.

5 Q Did you ask him to sign the advice of
6 rights form?

7 A I believe Agent Mangino did, sir.

8 Q And the defendant refused?

9 A Yes.

10 Q Did you hear the words the defendant used
11 when he refused?

12 A No, sir.

13 Q After the statement was taken by the
14 defendant -- excuse me, written by you from the defendant,
15 did you read the statement back to him?

16 A Agent Mangino did.

17 Q Did the defendant say anything after the
18 statement was read back?

19 A Yes, he told us that he agreed with what we
20 had written down there, but he said he would not sign
21 anything or initial anything until he talked to legal
22 counsel or a lawyer.

23 THE COURT: He was justified in doing that,
24 ladies and gentlemen. He did not have to say
25 anything or sign anything and you may draw no

inference against him for failing to sign anything or failing to say anything.

MR. CUNNINGHAM: I have no further questions of this witness, your Honor.

MR. KELLAM: I have no questions of this witness.

THE COURT: You may step down. Next witness.

(Witness excused.)

MR. CUNNINGHAM: The Government calls as its next witness Special Agent Mangino.

A D A M M A N G I N O, having been first duly sworn, took the witness stand and testified as follows:

DIRECT EXAMINATION

BY MR. CUNNINGHAM:

Q Agent Mangino, by whom are you employed?

A Federal Drug Enforcement Administration.

Q In what capacity?

A Special Agent.

Q Were you so employed on January 30 and January 31, 1973?

A Yes, I was.

1
2 A That was at 90 Church Street, the
3 Regional Headquarters, at that time, of the Bureau of
4 Narcotics and Dangerous Drugs.

5 Q What was the purpose of the discussion you
6 had with the defendant?

7 A He was -- we asked him questions relative
8 to what transpired the evening before when he talked to
9 Agent Simpson. In addition we asked him if he would
10 give us, meaning the agents present, a statement rela-
11 tive to any actions that had took place on the evening
12 before.

13 Q What did the defendant say when you asked
14 whether ornot he would give a statement?

15 A After we advised him of his rights as per
16 Form BND 13, it is now going to be BEA 13, which is a
17 statement of rights and waiver of same, the defendant
18 stated that he would make a statement relative to what
19 had transpired, however, he would not initial or sign
20 any statement which he gave until he had legal counsel.

21 Q I show you Government Exhibit 3 in evidence
22 and ask you if you can identify this document.

23 A Yes, sir, I can.

24 Q Tell the Court what that document is.

25 A That is the Form BND 13, which I mentioned

1
2 THE COURT: When you read it to him?

3 THE WITNESS: After we had taken the state-
4 ment and read it.

5 THE COURT: All right, you may introduce
6 it.

7 MR. KELLAM: Your Honor, I would object on
8 the record to any introduction based on the fact
9 there is no intelligible way of waiving any rights,
10 even orally.

11 THE COURT: I have already ruled on that,
12 as you know.

13 MR. KELLAM: I understand, your Honor, but
14 I am thinking everything is continuing and in view
15 of the fact there are more people now that are
16 testifying, if your Honor please will recollect
17 that there may be some difference in the testimony
18 here than the evidence we had before.

19 THE COURT: You are reviewing your Miranda
20 objection.

21 MR. KELLAM: Yes, your Honor.

22 THE COURT: That objection is denied.

23 Is there any other objection you have to
24 the admission of the statement?

25 MR. KELLAM: Yes, your Honor.

1
2 THE COURT: What?

3 MR. KELLAM: I believe that the testimony
4 of the witness would indicate that he does not know
5 whether or not this is an accurate statement.
6 I think he has been led into saying these other
7 things.

8 THE COURT: Well, I am admitting it as an
9 admission, an adoptive admission, under Rule 801d
10 of the proposed rules.

11 MR. KELLAM: I respectfully except, your
12 Honor.

13 THE COURT: Do you understand, ladies and
14 gentlemen, this is not a statement signed by the
15 defendant. If you do not believe that he did
16 say that it was accurate, then ignore it completely.
17 Even if you do believe he said it was accurate,
18 you can consider whether he was under duress or
19 did this knowingly or whether he was led into it
20 and the like, and determine how much weight should
21 be given to it. Is that clear?

22 All right, mark it in evidence, please.

23 THE WITNESS: May I make a point relative
24 to the actual statement or possibly clear up a
25 point?

1
2 THE COURT: Yes.

3 THE WITNESS: As far as we could ascertain
4 that night, I mean myself and the other agents
5 that were involved in the investigation, we cor-
6 roborate a lot that is said in the statement.

7 THE COURT: No, I do not want that, please,
8 do not volunteer anything. Strike that, and the
9 jury will ignore that sentence.

10 THE CLERK: People's Exhibit 5 in evidence.

11 THE COURT: It also comes in under 803(5)
12 of the proposed rules, Mr. Kellam.

13 MR. KELLAM: Thank you, your Honor.

14 Q Agent Mangino, this statement was being
15 taken down and after the statement was taken down by
16 Special Agent Brown, did you read the statement?

17 A Yes, I did.

18 Q Was the statement read to the defendant?

19 A Yes, it was.

20 Q Did you hear the statement being read to
21 the defendant?

22 A Yes, sir.

23 Q Was the defendant asked whether or not the
24 statement was a fair and --

25 MR. KELLAM: I object and ask for a mistrial.

1
2 THE COURT: I do not understand why you
3 keep leading the witness when we have already
4 covered this. It is repetitive.

5 MR. CUNNINGHAM: All right, your Honor.

6 THE COURT: Motion for a mistrial is
7 denied. The question was not answered. Try not
8 to lead the witness.

9 You have it in evidence. Use your state-
10 ment now.

11 Q Does the statement refresh your recollection
12 as to what took place?

13 THE COURT: Mr. Cunningham, we now have
14 the statement in evidence. Would you now get
15 off this point, please, and use your statement
16 the way you would any piece of evidence, so
17 that we do not interminably drag on.

18 Q Agent Mangino, would you please read the
19 statement to the Court?

20 A Yes, sir. On the top of the page it says,
21 "Statement by Richard Patterson."

22 MR. KELLAM: Everyone here can read.
23 I object to this. This statement is in evidence.

24 THE COURT: Well, counsel can either have
it read or copies can be passed out. Do you have

1
2 copies of it?

3 MR. CUNNINGHAM: Yes, I do, your Honor.

4 THE COURT: Pass them out to the jury.

5 No objection having been stated, let the jury
6 read it.

7 MR. KELLAM: I have my original objection,
8 but now that it is in evidence, I have no objec-
9 tion to its being passed out.

10 THE COURT: You understand, ladies and
11 gentlemen, I am never annoyed at counsel and
12 counsel is never annoyed at me. We sometimes
13 seem to be sharp with each other, but we are real-
14 ly not. Everybody is doing what they have to do.

15 Do all of you have one? If you do not,
16 those in the back, share them, every two jurors
17 will have them.

18 Q Agent Mangino, will you please read the
19 statement?

20 THE COURT: No, the jury is reading it
21 themselves. All right, continue, please.

22 Q When this statement was taken down, who
23 was present in the room?

24 A Myself, Agent Slattery, Agent Barrett,
25 and I believe Agent Woidl.

1
2 morning?

3 THE COURT: No, I do not think I want a
4 side bar on that.

5 Do not discuss the case, and keep an
6 open mind. Leave those documents.

7 (Whereupon the jury left the courtroom.)

8 THE COURT: I spoke to the judge today
9 and he does not think he will need him until
10 Friday. He will let us know as soon as he wants
11 him. We will send him over. He is over here in
12 Supreme Court, Brooklyn.

13 MR. KELLAM: That is right, your Honor.

14 THE COURT: We will call the first thing
15 in the morning and we will find out when he needs
16 him and we will get him over there in five
17 minutes.

18 Now make your motion, please.

19 MR. KELLAM: Does the Government rest?

20 THE COURT: The Government rests.

21 MR. KELLAM: At the end of the People's
22 case I respectfully move to dismiss based on the
23 ground that the People have failed to make out a
24 prima facie case, certainly with reference to
25 an intent to a sale. There has been no indication

1
2 that there was in fact any close proximity to a
3 sale. The incident, if there is one, certainly
4 is at best a sort of incident that would be so
5 remote in terms of substance you have nothing
6 whatsoever to do with this case so far as the
7 evidence that has been presented, and I respect-
8 fully move to dismiss.

9 THE COURT: Motion denied.

10 Are you going to put on a case? Are you
11 going to put a case in?

12 MR. KELLAM: Your Honor, I would probably
13 need to look at my papers and decide and think
14 in terms of whether or not the People's case
15 was worth enough to put in a case.

16 THE COURT: Well, it would be nice to know
17 so we can lay our plans for tomorrow, but I under-
18 stand your problem.

19 Have you had a chance to look over the pro-
20 posed charge? I still have no received briefs
21 or requests from either side.

22 MR. KELLAM: Your Honor, I do not have
23 briefs, but I have a couple of requests.

24 THE COURT: Have you looked at the proposed
25 charge?

1
2 MR. KELLAM: No, I have not, your Honor.

3 THE COURT: I typed up my attempt without
4 your assistance for a charge. You have it laying
5 on the table. Do you want to do it in the morning?

6 Will you get in about a quarter of ten
7 and we will go over it. What I would like you
8 to do if possible, give me specific suggestions,
9 language, where it goes, and what you want in
10 and out.

11 MR. KELLAM: I will have written sugges-
12 tions tomorrow morning, your Honor.

13 THE COURT: Thank you very much.

14 MR. KELLAM: May I have a word with my
15 client?

16 Your Honor, the defense rests.

17 THE COURT: Defense rests. All right, make
18 your motions again.

19 MR. KELLAM: Your Honor, at the end of the
20 entire case I respectfully move to dismiss the
21 indictment based on the ground that the People
22 have not -- for a directed verdict, your Honor.
23 People have not proved their case beyond a reason-
24 able doubt.

25 THE COURT: Denied. I think they have

1
2 enough in here to go to the jury.

3 All right, so tomorrow we will go over
4 the charge first and then we will have summations
5 and I will give them the charge and with God's
6 help may finish tomorrow.

7 Is there anything further, gentlemen?

8 Good night. Thank you very much.

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1 THE CLERK: United States of America
2 versus Richard Patterson.

3 THE COURT: Good morning.

4 MR. KELLAM: Good morning, Judge.

5 THE COURT: Are you prepared for trial?

6 MR. KELLAM: Yes, your Honor.

7 THE COURT: Is there any hearing before
8 trial?

9 MR. KELLAM: Yes, your Honor.

10 I would, first of all, ask your Honor to
11 inspect the grand jury minutes on the grounds
12 there are not sufficient facts to make out the
13 crime of an attempt, the sale of narcotic drugs.

14 THE COURT: How can I inspect them for that
15 purpose? In the absence of any indications there
16 is no reason for it.

17 MR. KELLAM: The reason for it is simply
18 this: that there was a previous trial on this
19 matter.

20 THE COURT: I remember it.

21 MR. KELLAM: The evidence adduced at trial
22 would indicate, No. 1, that there was no posses-
23 sion, actual possession of drugs by anyone to the
24 knowledge of the Government.

25 In addition, that there were no -- even

1 constructive possession as I believe under
2 the laws would require, that at least in order
3 for a sale to be attempted, there would have to
4 be some narcotic that the defendant had knowledge
5 of that existed, and I would like your Honor to
6 inspect the grand jury minutes to see if there
7 was any substance at all that would be the grava-
8 ment of this attempt.

9 THE COURT: No, I think there's enough by
10 the defendant's own activities to indicate that
11 he had access, assuming.

12 What else do you want?

13 MR. KELLAM: I understand there's a state-
14 ment allegedly made by the defendant.

15 THE COURT: You didn't get that at the last
16 trial?

17 MR. KELLAM: I would like a hearing to de-
18 termine whether or not that statement could be
19 used.

20 THE COURT: Didn't we give you a hearing
21 on that?

22 MR. KELLAM: No, we did not. They didn't
23 use it.

24 THE COURT: Will the Government use it?

25 MR. CUNNINGHAM: Yes.

1
2 jury proceeding at some time in the past and you appear-
3 ed before the grand jury with reference to this particu-
4 lar case; is that right?

5 A Yes, sir.

6 Q How many times have you appeared before a
7 grand jury with reference to this set of facts and this
8 defendant?

9 A Twice.

10 Q Now, you remember the first time that you
11 appeared before the grand jury was April 5, 1973; is
12 that right?

13 A I do not remember the exact date. It would
14 be on the memorandum.

15 Q Do you have the memorandum, or I will show
16 you a copy of the grand jury minutes and see if this
17 will refresh your recollection as to the date.

18 MR. CUNNINGHAM: Can we have it marked for
19 identification, please?

20 MR. KELLAM: Mark it for identification.

21 THE CLERK: Marked Defendant's Exhibit A
22 for identification.

23 Q I show you Defendant's Exhibit A for identi-
24 fication and I ask you to look at the date.

25 A It is April 5, 1973.

1
2 A Yes.

3 MR. CUNNINGHAM: No further questions.

4 THE COURT: Thank you very much, sir.
5 We'll take a five-minute recess.

6 THE WITNESS: Thank you very much, your
7 Honor.

8 (Jury leaves the courtroom.)

9 (Recess)

10 MR. CUNNINGHAM: Before the jury returns,
11 can we have some ground rules set as we did in
12 the last trial for the playing of the tape record-
13 ing, the tape, and also giving out to the jury
14 copies --

15 THE COURT: Of the transcript?

16 MR. CUNNINGHAM: It will be exactly the
17 same copies as we used previously.

18 THE COURT: Any objection?

19 MR. KELLAM: No objection at this time,
20 Judge.

21 THE COURT: All right.

22 MR. KELLAM: Your Honor, I have a couple
23 of motions I would like to make for the record.

24 THE COURT: You may.

25 MR. KELLAM: First of all, I would like

1
2 to renew my motion to dismiss based on the fact
3 that what an inspection of the grand jury would
4 indicate. I've had an opportunity to read the
5 grand jury minutes and I see that Agent Simpson
6 said before the grand jury on page 6,

7 "Question: Did Miss Bryant ever return
8 with the eighth of a kilogram of heroin?

9 "Answer: No, sir.

10 "Question: Were you later advised that
11 Miss Bryant and Mr. Patterson had been apprehended
12 and placed under arrest?

13 "Answer: Yes, sir.

14 "Question: Do you know what disposition
15 of Miss Bryant's case is at this date?

16 "Answer: Yes, sir.

17 "Question: Do you know if she plead to a
18 crime?

19 "Answer: Yes, sir.

20 "Question: Do you know whether or not
21 Miss Bryant plead guilty to a misdemeanor charg-
22 ing her with possession of heroin on January 30,
23 1973?

24 "Answer: Yes, she did.

25 "MR. CUNNINGHAM: I have no further

1
2 questions. You may be excused."

3 Your Honor, I say this is at best a half-
4 truth.

5 THE COURT: You mean you think Simpson was
6 lying?

7 MR. KELLAM: No, wasn't lying. It was a
8 half-truth, because the jury would clearly get
9 the impression that she was convicted --

10 THE COURT: The jury isn't going to hear
11 anything about it.

12 MR. KELLAM: I'm talking about the grand
13 jury, Judge.

14 THE COURT: Oh.

15 MR. KELLAM: I'm saying we have no business
16 here because the grand jury was led to believe
17 that Miss Bryant implicated Patterson or at least
18 her plea did, when expressly it was stated and
19 asked of her did Mr. Patterson -- was he involved
20 in it. She said Mr. Patterson had nothing to do
21 with it.

22 THE COURT: That doesn't mean anything,
23 whether she had anything to do with it or not.
24 The Government can go forward on the theory that
25 he tried to arrange the sale of narcotics.

1
2 MR. KELLAM: The only point I'm trying to
3 make, your Honor, is that if that doesn't have
4 anything to do with it, it should not have been
5 presented to the grand jury.

6 MR. CUNNINGHAM: Your Honor, if I might
7 answer that, there was a question came from one
8 of the jurors which was shouted out, which was
9 not recorded, and said, "What about the girl?"
10 That's the reason I pursued the question.

11 THE COURT: Were you in the grand jury?

12 MR. CUNNINGHAM: Yes, I presented the grand
13 jury testimony.

14 THE COURT: If you want to call the fore-
15 man of the grand jury, you may, or if you want to
16 question the Assistant United States Attorney you
17 may, but I don't see that any of this has to do
18 with us.

19 Before us, the issue is whether or not
20 this defendant is guilty as charged.

21 MR. KELLAM: Your Honor, my only reason for
22 saying this is that if there's something irregular
23 or wrong with the grand jury, it would be my argu-
24 ment the proceedings in the grand jury; that this
25 case would not be here in the first place. If

1
2 the grand jury had not indicted, then we would
3 not be here.

4 It seems to me there's some very poor
5 logic behind if something went wrong in the grand
6 jury --

7 THE COURT: Based upon what you read,
8 I'm not so convinced, but you may brief it if
9 you like.

10 I would like to get some help on how the
11 jury should be charged on this attempt. I have
12 not received a brief nor have I received any
13 requests for instructions from either one of you
14 counsel.

15 I understand the position of the defendant
16 is that there was no narcotics in the possession
17 of Miss Bryant, this defendant cannot be guilty;
18 is that it?

19 MR. KELLAM: That's correct, your Honor.

20 THE COURT: You'd better give me a brief.
21 I don't believe you're right. He could attempt
22 to get the sale even though they may have pre-
23 tended she was the prospective purchaser.

24 Brief it. I don't want to hear arguments
25 without cases. Give me a request to charge, if

1
2 A Yes, we terminated the search at about 5:15
3 in the morning of the 31st, and I sent agents to Mr. Pat-
4 terson's apartment to notify the ones remaining there to
5 break off and to return to Regional Headquarters at
6 Church Street. We all proceeded to headquarters at 90
7 Church Street.

8 Q Could you tell me approximately what time
9 you got back to headquarters?

10 A It was about 5:45 in the morning.

11 Q When you got back to the Regional Head-
12 quarters, what did you do then? Did you have any duties
13 or functions you performed at that time?

14 A Yes, I did. Several of the agents proceeded
15 to process Mr. Patterson by fingerprinting, personal
16 history, and so forth, photographing.

17 Q Did you take an active part in the process-
18 ing?

19 A No, I didn't take an active part. I was
20 present.

21 Q Did there come a time when Mr. Patterson
22 was asked questions by other brother agents of yours?

23 A Yes. At approximately ten -- 6:10 a.m.,
24 Mr. Patterson was specifically questioned by Agents
25 Mangino and Barrett. He was again read his rights on

Standard Form 13, which is a form that we use at Headquarters locations, office places, where he can read and sign the statement.

MR. CUNNINGHAM: The Government would like to mark at this time for identification a Statement of Rights and Waiver, Government's Exhibit 2 for identification.

THE CLERK: Government's Exhibit 2 for identification.

(So marked)

Q I ask you to identify that document (handing to witness).

A Yes, this is the Form BND Form 13, Statement of Rights and Waiver. Do you want me to read it?

Q No.

A There is a place where it says, under "Waiver," it says, "I had read to me..." It's checked "had read." It's checked rather than "I have read..."

Q Were you present when this form was read to the defendant?

A Yes, I was.

Q Do you recall who was reading this form to the defendant?

A Yes, Special Agent Adam Mangino and Joseph

1
2 Barrett. Mr. Patterson acknowledged the statement and
3 refused to sign the statement of rights and waiver.

4 Q Did he have any reason for refusing to
5 sign it?

6 A No, he said that.--

7 Q Was he willing -- Did he ask --

8 MR. KELLAM: I would like to get the
9 answer. He said something.

10 THE COURT: What did he say?

11 THE WITNESS: He said he was perfectly
12 willing to make a statement, but that he would
13 prefer not to sign a statement until such time
14 came when he spoke to his attorney.

15 Special Agent Adam Mangino and Barrett
16 proceeded to take a statement from him. Special
17 Agent Barrett wrote out the statement and Mr. Pat-
18 terson responded to the questioning of Special
19 Agent Mangino.

20 Q While the statement was being taken from
21 the defendant, what were you doing?

x 22 A I was in a general area, but I was writing
23 a report of the circumstances that had occurred on the
24 previous night and although I was sitting in the same
25 room, in the same area, I was writing a statement.

Q Were you able to -- were you in the same room the entire time this statement was being written?

A Yes, I was.

MR. CUNNINGHAM: I would like to have this marked as Government's Exhibit 3 for identification.

Let the record show it's a two-page statement, handwritten, on yellow paper, 8½ x 14.

THE CLERK: Government's Exhibit 3 for identification.

(So marked)

Q Agent Slattery, I ask you if you can identify this document (handing to witness).

A Yes, this is the statement that Special Agent Barnett wrote. It's signed at the end, witnessed by Special Agent Mangino, Special Agent Richard Slattery, and Saverio Weidl. There's a time and notation of 6:40 a.m.

MR. KELLAM: May I see the statement?

MR. CUNNINGHAM: Surely.

(Said document handed to Mr. Kellam.)

THE COURT: You have a Xerox copy of that, don't you?

MR. CUNNINGHAM: That's correct, your Honor.

1
2 MR. KELLAM: I think it's the first time
3 I've seen the original writing, your Honor.

4 THE COURT: You can take your time.

5 May I see the Xerox copy?

6 MR. CUNNINGHAM: Let the record show the
7 copy given to defense counsel was a copy of the
8 original.

9 (Copy handed to the Court.)

10 MR. KELLAM: I just got this right now.
11 I see; thank you.

12 No objection.

13 THE COURT: Continue.

14 MR. CUNNINGHAM: At this time I would move
15 that Government's Exhibits 1, 2 and 3 for identi-
16 fication be marked into evidence.

17 THE COURT: For this hearing, they'll be
18 deemed in evidence.

19 MR. CUNNINGHAM: Thank you.

20 I have no further questions of this
21 witness.

22 THE COURT: I notice the indictment reads,
23 "841(a)(1)." He's charged with an attempt, which
24 is 846, as I understand it.

25 Is the defendant misled at all by that

1
2 to whether or not the defendant was or was not
3 under the influence of alcohol or any other
4 sort of intoxicant. The defendant refused to
5 sign, but they do not know whether or not he was
6 read all this at one time or whether it was all
7 read together.

8 Under those circumstances I do not believe
9 we would presume there was an intelligent waiver
10 of his rights to counsel, of his right to keep
11 silent or any of the other rights that were al-
12 legedly read to him.

13 THE COURT: I find the defendant was fully
14 apprised of his rights and he understood those
15 rights. He was not in any way coerced, he was
16 not intoxicated, and there is no reason to
17 suppress. Accordingly, the motion is denied.

18 MR. KELLAM: I respectfully except.

19 THE COURT: Do you have anything further?

20 MR. KELLAM: No, your Honor.

21 THE COURT: If you have anything you want
22 me to ask the jury, write it down.

23 Call down and get the panel.

24 MR. CUNNINGHAM: Excuse me, your Honor,
25 as far as Government witnesses are concerned,

1
2 the kid could be carrying heroin. If the lab
3 report said the kid didn't have it --

4 THE COURT: It has nothing to do with the
5 case before us. You shouldn't have argued.
6 I allowed you to go ahead. We're not trying that
7 kind of case. What's the point in it? My
8 charging them on some other case that isn't before
9 us? This one confuses the jury.

10 (The following occurred in open court.)

11 THE COURT: Ladies and gentlemen, you've
12 heard the summations and the attorneys gave you
13 their recollection of the evidence. It's your
14 recollection that counts, not theirs. If you
15 want to find out what exactly was said according
16 to the record, you can send in a note, and we'll
17 try to find the place for you and read it so you
18 can hear exactly what the record says.

19 We're not discussing any hypothetical case
20 here of four-year-old children or heroin that
21 was analyzed and found not to be heroin, found
22 to be sugar or anything like that. That's not
23 the case before you. I want you to decide this
24 particular case on the evidence you've heard
25 and the charge that I am now going to give you.

1
2 Is that clear?

3 We have a real case. Let's concentrate
4 on that.

5 I want you to follow my instructions on
6 the law. You're going to decide the facts.
7 Nobody else can do that for you. I have no
8 view of the guilt or innocence of this defendant,
9 and if anything I've said or done suggests to
10 you that I have such a view, put it out of your
11 minds. My only purpose is to see that you decide
12 this case fairly and in accordance with the law
13 and the evidence.

14 Don't assume that the lawyers or anybody
15 else knows something that you don't know. Just
16 decide it on what you heard and see.

17 The fact that this case is brought in the
18 name of the United States doesn't mean anything.
19 All parties are equal in this court. Nobody is
20 entitled to any sympathy or any favor.

21 It is an accusation in writing that's
22 called an indictment. It's no evidence at all
23 of guilt, and it's entitled to no weight in your
24 judgment of the facts.

25 The defendant has pleaded not guilty.

1
2 The Government has the burden of proving guilt
3 beyond a reasonable doubt with respect to each
4 element of the crime he's charged with committing.
5 This burden never shifts throughout the trial.

6 A defendant does not have to prove his
7 innocence. He need not submit any evidence at
8 all. A defendant need not take the witness stand
9 and if he chooses not to testify, you must draw
10 no inference against him because he so chooses.
11 The matter should not be considered by you.

12 On the contrary, a defendant is presumed
13 to be innocent. A presumption of innocence re-
14 mains with the defendant throughout the trial
15 and must be considered by you in your delibera-
16 tions.

17 A reasonable doubt means a doubt sufficient
18 to cause a prudent person to hesitate to act in
19 the most important affairs of his or her life.
20 Reasonable doubt may result from the evidence or
21 from the lack of evidence.

22 Finding an individual to be guilty of
23 committing a felony and subjecting him to the
24 possibility of criminal penalties is serious,
25 and you will consider this in deciding whether

or not you have a reasonable doubt.

Nevertheless, if at the end of this deliberation you are convinced beyond a reasonable doubt that the defendant was guilty of the crime charged, you should find him guilty as charged.

It must be established beyond a reasonable doubt that a defendant acted willfully and knowingly before he may be found guilty of a crime. An act is willful and knowing if it is done intentionally, deliberately and voluntarily and with the specific intent to accomplish something the law forbids; that is to say, with a bad purpose.

An act is not knowing if it is committed because of the mistake, carelessness, negligence, stupidity or some other non-criminal reason.

This indictment charges one count or crime. That reads as follows: "On or about the 30th day of January, 1973, within the Eastern District of New York, the defendant, Richard Patterson, did knowingly and intentionally attempt to distribute approximately one-eighth kilogram of heroin, a narcotic drug," as defined by the statutes.

This count charges a violation of Section 846 of Title 21 of the United States Code, which

1
2 reads as follows: "Any person who attempts to
3 commit any offense defined in this subchapter
4 is guilty of a crime."

5 The offense the defendant is charged with
6 attempting to commit is a violation of Section
7 841(a)(1). The same subsection or subchapter,
8 which reads in relevant part as follows: "It
9 shall be unlawful for any person knowingly or
10 intentionally. . . to distribute a controlled
11 substance." Heroin is a controlled substance.
12 The exact amount charged in the indictment is
13 not what's critical. It does not have to be
14 exactly an eighth of a kilogram.

15 What's involved is whether he did attempt
16 to distribute heroin, in this case, by sale.

17 The Government must prove two elements
18 beyond a reasonable doubt. First, that the
19 defendant did in fact attempt to distribute heroin,
20 and second, that he made the attempt knowingly
21 and intentionally; that is, he knew it was heroin
22 that he was attempting to distribute, or believed
23 it was heroin in this case.

24 To attempt to commit a crime means to do
25 some act in an effort to bring about or accomplish

1
2 something the law forbids to be done. Obviously,
3 an attempt doesn't have to result in the success;
4 otherwise, it would not be an attempt to sell
5 heroin that would be charged, but the sale of
6 heroin.

7 It must be an attempt to do the specific
8 act charged. Here the defendant must at some
9 time that evening have believed that the girl
10 involved was going to get heroin. If he was
11 engaged in a conspiracy to trick Agent Simpson,
12 to get his money or part of it without delivering
13 heroin, he could not be guilty of the crime
14 charged.

15 He might be guilty of a larceny by
16 trick or some other crime, but not the one you're
17 trying.

18 I instruct you strongly if you find this
19 defendant guilty because you believe he did some
20 other bad act other than the one charged, you're
21 doing the wrong thing. You have to decide the
22 case before you.

23 He must be found not guilty unless the
24 Government has proved him guilty beyond a reason-
25 able doubt of the crime charged, which is

1
2 attempting to sell heroin.

3 The intention and state of mind of the
4 defendant is, as you can see, critical. It's
5 not possible to directly read another person's
6 mind. Therefore you must determine the state
7 of mind of this defendant from what you conclude
8 he did and said and what went on that evening
9 if you find anything went on that evening. You
10 must, in short, interpret the events of that
11 evening as you find them in the light of your
12 own common sense and knowledge of the way people
13 act and the way affairs are conducted.

14 You have to decide credibility of the
15 witnesses you heard. In weighing that, those
16 witnesses' testimony, you may consider the rela-
17 tionship of the witness to the Government or to
18 anybody else, the witness's bias or interest
19 in the outcome of the case, his manner while
20 he was testifying, his candor and intelligence
21 as you observed it, the extent to which he's
22 been corroborated or contradicted by other
23 credible evidence.

24 If you believe a witness has sworn
25 falsely before you, you may with respect to

1
2 any material element in the case he testified
3 about, ignore his testimony, but a witness may
4 be mistaken about something when he testifies,
5 honestly mistaken, and you may therefore believe
6 other things that he testifies to without be-
7 lieving everything he says.

8 You're not to give any greater weight or
9 credibility to the testimony of a witness who
10 testifies in this case, solely because of the
11 fact that he's an agent of the Government. His
12 testimony is to be evaluated in the same way
13 as other people's testimony is to be evaluated.

14 The mere number of witnesses or documents
15 or things is not decisive. You have to deter-
16 mine the quality of it and put it all together.

17 If you're confused about anything and
18 think you may need some help, send out a note.
19 Obviously, we would like to avoid having to
20 re-read the whole record. Try to be specific.
21 If you want any material sent in, that is
22 actually admitted, send out a note.

23 You should make up your own mind, but
24 you should listen carefully to each other and
25 exchange views. If you think somebody else is

1
2 right and you're wrong, you shouldn't hesitate
3 to change your mind. Your decision must be
4 your own, and it must be unanimous. All twelve
5 jurors have to agree.

6 Your oath sums up your duty. That is,
7 without fear or favor to any man, you will well
8 and truly try the issues before these parties
9 according to the evidence given to you in court
10 and the law of the United States as I've just
11 described it to you.

12 Is there any objection to relieving the
13 alternates?

14 MR. KELLAM: No, your Honor.

15 MR. CUNNINGHAM: No.

16 THE COURT: The four alternates are
17 relieved. Do not discuss this case with each
18 other or anybody else until the verdict is in.
19 Is that clear?

20 Gentlemen, would you come to side bar,
21 please, to see if I've misspoken or missaid
22 anything?

23 (The following occurred at side bar.)

24 THE COURT: Do you have any objection?

25 MR. KELLAM: No objection.

Time noted: 3:10 p.m.

THE CLERK: The juror's note marked
Court Exhibit 3.

(So marked)

THE COURT: We have Court Exhibit 3.
They want the telephone transcript. Let me
have it.

MR. CUNNINGHAM: No objection.

MR. KELLAM: No objection.

THE COURT: That's Government's Exhibit 4
in evidence.

The want the original statement. Any
objection?

MR. CUNNINGHAM: No, your Honor.

MR. KELLAM: No objection.

THE COURT: The yellow paper, Government's
Exhibit 5. They want the tape cassette.

I don't know why.

AGENT SLATTERY: I'll have to play it out
here, I guess.

THE COURT: I just go by the notes.

They want the transcript of Simpson on
the stand --

MR. KELLAM: They say the transcript, the

1
2 whole transcript?

3 THE COURT: Do you want to send that in?

4 MR. CUNNINGHAM: Was Simpson's testimony
5 qualified in any way?

6 THE COURT: It says "transcript of
7 Simpson on the stand."

8 MR. CUNNINGHAM: Anything after that?

9 THE COURT: Regarding the number of cases
10 previously worked on and the time he spoke of
11 same subject when testifying to grand jury
12 before.

13 MR. KELLAM: Your Honor, let me indicate
14 how at least I interpreted that.

15 THE COURT: Excuse me. While we're discus-
16 sing it, is there any objection to my giving
17 Exhibits 1, 4 and 5 to the marshal to take in?

18 MR. CUNNINGHAM: No, your Honor.

19 MR. KELLAM: No, sir.

20 THE COURT: I'm not going to let them play
21 in there. They're liable to erase it, if there's
22 anything to be done it will be done out here.

23 What do you want to do about Simpson's
24 transcript?

25 MR. KELLAM: Your Honor, I have no objection

(The jury enters the jury box.)

THE CLERK: Juror No. 6 just handed me the cassette, which is Government's Exhibit 1 in evidence.

THE COURT: Ladies and gentlemen, we are not all quite clear what you want read, but we've done our best to pick out that little portion of the record, and the reporter will read it to you.

(Said testimony, requested by the jury, read back by the reporter in open court.)

THE COURT: Anything further?

(No response)

THE COURT: Thank you, ladies and gentlemen. Retire.

JUROR NO. 10: The tape?

THE COURT: You want the tape played?

THE FOREMAN: Yes.

THE COURT: Play the tape, please.

(Exhibit 1 played before the jury on electronic equipment.)

(The jury leaves the courtroom.)

Time noted: 3:35 p.m.

Time noted: 4:20 p.m.

THE CLERK: Court Exhibit No. 4, jurors' note, so marked.

(So marked)

THE COURT: Another note, jurors' note, marked Court Exhibit 5.

(So marked)

THE COURT: I have Court Exhibit 4 asking "Has it been confirmed on the transcript, the phone number belongs to Patterson? What does the Government have?"

MR. CUNNINGHAM: The Government says from page 13 of the transcript, line 6.

THE COURT: May I see it, please?

MR. CUNNINGHAM: Page 14 of the transcript, line 4, I'm sorry, line 2, it should be.

MR. KELLAM: Your Honor, I do not agree to that. I say that it should start on --

THE COURT: Excuse me. I have another note.

THE CLERK: Jurors' note marked Court Exhibit 6.

(So marked)

THE COURT: Where does it say it was con-

1
2 firmed this was Patterson's number?

3 AGENT SLATTERY: The next page, your Honor.

4 THE COURT: What page?

5 AGENT SLATTERY: 14, at the top of the
6 page.

7 THE COURT: Did you notice where I sustain-
8 ed the objection?

9 MR. KELLAM: That's the point I'm trying
10 to make. Judge, in order to get the whole amount
11 of what they're asking --

12 THE COURT: You didn't confirm that it was
13 his number? The normal way of confirming that is
14 somebody's number is for the witness to testify
15 "I called such-and-such a number," and then to
16 bring in records showing this is his number. You
17 clearly didn't. You failed in your proof.

18 I didn't understand why, but I couldn't try
19 your case completely for you.

20 MR. CUNNINGHAM: Your Honor, as far as I was
21 concerned, I was under the impression that the
22 evidence was in so far as the evidence came in.
23 The jury ought to be able to hear the witness's
24 testimony or it's going to appear he never heard
25 it.

1
2 THE COURT: No, I'm not going to It
3 wasn't confirmed at all.

4 MR. KELLAM: Your Honor, I would just
5 call attention to the fact that the context --

6 THE COURT: It's clearly not confirmed.

7 MR. KELLAM: I had objected about it
8 being introduced from the first time on the
9 basis of no proper foundation being laid.

10 THE COURT: Of course.

11 MR. KELLAM: If you just turn a few pages
12 back, you'll see them. That's the reason. If
13 you bring it in, you have to bring it all in.

14 THE COURT: What page?

15 MR. KELLAM: Page 12, line 22.

16 Special Agent Simpson testified -- called
17 him at his residence. Then I objected.

18 THE COURT: The Court sustained it. He
19 came and did the same thing. It's still the same
20 objection. Does it say in the statement that,
21 "I was telephoned at my home"?

22 MR. CUNNINGHAM: I'm going to read from
23 page 1 of the yellow sheets of Government's
24 Exhibit 4: "The man didn't show up. Then she
25 called me again on Sunday, 1/28/73 and said the

1
2 man would be here Tuesday between 7:00 and
3 8:00 p.m. 1/30/73 to LaGuardia Airport. The man
4 called me from LaGuardia about ten minutes to
5 seven 1/30/73. I told him I would come out to
6 the airport."

7 THE COURT: That's the only thing there
8 is? I'll tell them that the only thing is in
9 the statement.

10 Now, Court Exhibit 5.

11 MR. KELLAM: Your Honor, I don't believe
12 that answers the question. However, -- What's
13 the question again?

14 THE COURT: "Has it been confirmed on
15 the transcript that the phone number belongs
16 to Patterson?"

17 MR. KELLUM: Does that confirm it?

18 He says he was called.

19 THE COURT: That's right. There isn't
20 any indication the phone number called was listed
21 in Patterson's name. I'll tell them that.

22 Court Exhibit 5, "Was it ever stated the
23 words 'heroin' and 'package' are synonymous
24 during the course of the trial and by whom?"

25 THE COURT: Yes, it was. Find the

1
2 transcript on that.

3 MR. CUNNINGHAM: The Government would
4 submit the beginning of the conversation started
5 on page 58, line 12, and continued on to page
6 59, line 2, and furthermore, picked up on page
7 82, line 11, and continued on to page 83, line 2.

8 THE COURT: You can see that, Mr. Kellam?

9 MR. KELLAM: Yes.

10 THE COURT: The answer to that question
11 is yes. Why don't I write it on the note and
12 just write "Yes"?

13 MR. KELLAM: Very well, your Honor.

14 THE COURT: "Yes, by Agent Slattery."
15 I'm sending in Court Exhibit 5 with that notation.
16 Do you want to examine it?

17 MR. KELLAM: No.

18 THE COURT: Court Exhibit 4, the answer is
19 "no, except in the statement which you have,
20 indirectly in the statement which you have."

21 MR. KELLAM: Beg pardon?

22 THE COURT: On Court Exhibit 4, I'll
23 write, "No, except indirectly in the statement
24 which you have."

25 MR. KELLAM: Judge --

1
2 a question of where were you living at the time.
3 What record says that?

4 THE COURT: It was Nancy Brown's phone.

5 MR. KELLAM: No question about that,
6 but not the defendant Patterson.

7 THE COURT: That's right.

8 MR. CUNNINGHAM: I would suggest page --

9 "Mr. Cunningham has no further questions.

10 "MR. KELLAM: I have no further questions
11 of this witness."

12 THE COURT: May I see the note, please?

13 No, there was testimony --

14 MR. KELLAM: Not by Barrett.

15 THE COURT: Not by Barrett.

16 MR. CUNNINGHAM: That's correct, your
17 Honor.

18 THE COURT: I'll write here, "Barrett did
19 not testify on this subject."

20 MR. CUNNINGHAM: I'll say no, your Honor.

21 MR. KELLAM: No, none.

22 MR. CUNNINGHAM: None.

23 THE COURT: None.

24 Time noted: 4:35 p.m.

1
2 THE COURT: Yes.

3 JUROR NO. 7: Could you clear up one por-
4 tion there where it says an explanation of a
5 reasonable doubt?

6 THE COURT: I'll read it to you.

7 Any objection?

8 MR. CUNNINGHAM: No.

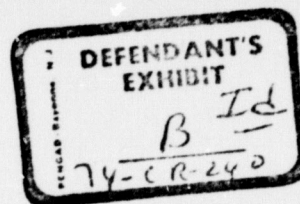
9 MR. KELLAM: No objection.

10 THE COURT: A reasonable doubt means a
11 doubt sufficient to cause a prudent person to
12 hesitate to act in the most important affairs
13 of his life or her life. Reasonable doubt may
14 result from the evidence produced or from failure
15 to produce evidence.

16 Finding an individual to be guilty of
17 committing a felony and subjecting him to criminal
18 penalties is most serious and you will consider
19 this fact in deciding whether you have a reasonable
20 doubt.

21 Nevertheless, if, at the end of the trial,
22 you are convinced beyond a reasonable doubt that
23 the defendant is guilty of the crime charged,
24 then you should find him guilty of that crime.

25 JUROR NO. 7: Thank you.



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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA

- against -

RICHARD PATTERSON

-----X

Criminal Folder

#741,479

225 Cadman Plaza East
Brooklyn, New York

April 2, 1974

GRAND JURY MINUTES

Presented by:
MYLES C. CUNNINGHAM, ESQ.,
Assistant United States Attorney

Reported by:
Maureen Kramer

Witness:

WILLIAM SIMPSON

1

2

2

W I L L I A M

S I M P S O N,

after having

3

been duly sworn, assumed his seat as a witness

4

and testified as follows:

5

EXAMINATION BY

6

MR. CUNNINGHAM:

7

Q Mr. Simpson, by whom are you employed?

8

A Drug Enforcement Administration.

9

Q Were you so employed on January 30, 1973?

10

A Yes, sir.

11

Q On January 30, 1973, did you have

12

occasion to have a telephone call with the defendant,

13

Mr. Patterson?

14

A Yes, sir.

15

Q Very briefly, could you tell the ladies

16

and gentlemen of the Grand Jury what the purpose of

17

the telephone call was?

18

A The purpose of the telephone call was to let

19

Mr. Patterson know that I was in town and I was ready

20

to purchase one-eighth kilogram of heroin for \$5,000.

21

Q Did you make arrangements to meet

22

Mr. Patterson at any special place?

23

A Yes, sir.

24

Q Where was that?

25

A At LaGuardia Airport, Alleghany Airlines.

1

2

Q Did you meet Mr. Patterson at the airport?

3

A Yes, sir.

4

5

Q You stated that you had made arrangements to buy an eighth of a kilo of heroin for \$5,000 from Mr. Patterson. Did you have any money with you when you were at the airport?

7

8

A Yes, I did.

9

Q How much did you have, sir?

10

A Approximately \$5,000.

11

12

Q Did you give any of this money to Mr. Patterson?

13

A Yes.

14

Q How much did you give him?

15

A \$2,500.

16

Q To whom did you give this money?

17

A To Mr. Patterson's girlfriend.

18

Q What was her name?

19

A Juanita Bryant.

20

21

Q What was the arrangements whereby you gave the money to Miss Bryant?

22

23

24

25

A She was to take half of the money which was \$2,500 and go pick up the one-eighth kilogram of heroin while myself and Mr. Patterson were to wait for her at the airport.

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Q Did Miss Bryant ever return with the eighth of a kilogram of heroin?

A No, sir.

Q Were you later advised that Miss Bryant and Mr. Patterson had been apprehended and placed under arrest?

A Yes, sir.

Q Do you know what the disposition of Miss Bryant's case is at this date?

A Yes, sir.

Q Do you know if she pled to a crime?

A Yes, sir.

Q Do you know whether or not Miss Bryant pled guilty to a misdemeanor charging her with possession of heroin on January 30, 1973?

A Yes, she did.

MR. CUNNINGHAM: I have no further questions. You may be excused.

(Whereupon, the witness was excused and withdrew.)

oOo

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①

Statement of [unclear] Patterson 6-11-73

re. Report made with [unclear] agent 4/30/73 @ 7.10


Greg normally buddy Mitchell came to my home and told me his wife is in Pittsburgh on 4/19/73. He told me that she wanted to get some stuff, and he asked me if I knew where to get it. I told him I don't know but I will ask around. He said, I want you to speak to her. I said I ~~would~~ go and call her. He called her up and spoke to her and then he gave me the phone and she told me, I would like to get an eighth and I'm spending \$5,000.00. I told her give me a few days and I'll try and look it up. She said give me a phone number so I can get in touch with you. She called me, ~~and~~

~~1/27/73~~, 8:00 pm Saturday 1/19/73 and said the
man would be there Saturday between 8 & 10 pm
1/27/73. The man didn't show up. Then she called
me again on Sunday 1/28/73 and said the
man would be here Tuesday between 7 & 8 pm
1/30/73 to La Guardia Airport. The man called
~~at 7~~ from La Guardia about 10 minutes to noon
1/30/73. I told him I would come out to the
airport. I went to the show place Bar, and I
picked up this girl that was supposed to get it for
him. If the guy buys the stuff I would get
\$500.00. The girl told me this. I got to the
airport, I met the guy and told him the
girl was here. He said to me, 'Have you got
the package?' I said no. I got the people who
were supposed to get it for him. But he said

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(5)

where are they, and I said ~~there~~ ^{she} is out in the car. I said do you want to go out to the car, he said no, show me the car. I said the car is right down there, and he said I don't want to walk down there, tell her to come down here. I walked out on the street and begged for her to come down here in the car. I asked him, do you want to sit in the car and he said no, you go back inside and I'll go talk to her because I don't want to be stuck up. I went in and waited. Then he came back in the place and told me that he gave her half of the money. And she is supposed to get the package and come

back. I called my home and told Nancy I was
at the airport. ~~After~~ During that phone call the
uniformed police come up asked me to identify
myself. I showed them my identification
and asked them what this was all about. They
said I looked like some suspect involved
in the shooting of policemen. They searched me
and told me I could go. Then I caught a cab
with the man and returned to the hangar.
And I asked the man if he wanted to wait for the girl
to either get his money back or get the package. He said
OK. I will wait. I said let's go in the bar and have
a drink. He said no I'll wait in the cab. I went
in the bar had a drink and waited about 10 or 15
minutes, he never came in. Then the car came
and I had a drink with the  to say the

passenger outside said he is ready to leave. I said to the cab driver, tell the passenger to go ahead because I'm not going anywhere.

I give this of my own free will, no promises or threats have been made to me.

I saw no money, no one gave me any money. It was told to me that he gave the girl \$2500.00. I never saw the girl after she left the car.

This statement was read back to him and he agreed with its content, but refused to sign or initial this statement until such time he could confer with legal counsel.

Witnessed by.

✓ Written by: Special Agent Joseph R. Bassett
at 90 Church Street, N.Y. N.Y. as given to me
by Richard Patterson, in 1/31/73.

S/A L. don Mangione 1/31/73 @ 6⁴⁰ AM

S/A Robert Stettin 1/31/73 @ 6⁴⁰ AM

S/A Lawrence Webb 1/31/73 @ 6⁴⁰ AM

74-2063

[Handwritten signature]

NOV 11 4 09 PM '74
EAST. DIST. N.Y.

RECEIVED
U.S. ATTORNEY

